IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.286 OF 2002

Cruiseline Database Pvt.Ltd. A company incorporated under the Indian Companies Act 1956 and having its office at 401, E Wing Rizvi Nagar, Santa Cruz West, Mumbai, represented by its Director Shri Michael Hayes ..... PETITIONER

VERSUS

1. Prime Shelters Estate Developers & Builders Pvt. Ltd. a Company incorporated under the Indian Companies Act, 1956 having its registered office at 0-104 2nd floor, Gomes Catao Complex, Mapusa, Bardez, Goa;

2. Prime Goan Resorts Pvt.Ltd. a Company incorporated under the Indian Companies Act 1956 having its registered office at 0-104 2nd floor, Gomes Catao Complex, Mapusa, Bardez, Goa;

3. Mr.Lucindo Faria, Director of Nos.1 and 2, above C/o Prime Shelters Estate Developers & Builders Pvt. Ltd. a Company incorporated under the Indian Companies Act 1956 having its registered office at 0-104 2nd floor, Gomes Catao Complex Mapusa, Bardez, Goa;

4. Mr.Agnelo Braganza, Director of Nos. 1 & 2,above C/o Prime

Shelters Estate Developers & Builders Pvt.Ltd. a Company incorporated under the Indian Companies Act 1956 having Its registered office at 0-104 2nd floor, Gomes Catao Complex Mapusa, Bardez, Goa;

5. Mr. Francis Braganza, Director of Nos.2 above C/o Prime Shelters Estate Developers Builders Pvt.Ltd. a Company incorporated under the Indian Companies Act 1956 having its registered office at 0-104 2nd floor, Gomes Catao Complex Mapusa, Bardez, Goa;

6. Mr. Sylvester De Cunha, s/o Victor Lawrence Da Cunha;

7. Mrs. Nisha S. Da Cunha, w/o Sylvester Da Cunha, both residing at 4 Hill Crest, Peddeer Road, Mumbai;

8. Resort Condominium India Pvt. Ltd. 208 Brigade Gardens, 19 Church Street, Bangalore;

9. 1st Additional Civil Judge, Senior Division at Mapusa ..... RESPONDENTS

Mrs. A.A. Agni and Mrs. N. Narvenkar, Advocates for the Petitioner.

Mr. M.JS. Usgaonkar, Sr. Advocate, with Mr. V. Menezes, Advocate for the Respondents No.1 and 4.

Mr. S.D. Lotlikar, Sr. Advocate with Mr. A.D.Bhobe, Advocate for the Respondents No.2 and 5.

Mr. S.G. Bhobe, Advocate for the Respondent No.3.

CORAM : P.V. KAKADE,J.

DATED : DECEMBER 5, 2002.

ORAL JUDGMENT

Heard Smt. Agni, the learned Counsel for the Petitioner, Shri Usgaonkar, the learned Counsel for the Respondents No.1 and 4, Shri Lotlikar, the learned Counsel for the Respondents No.2 and 5 and Shri Bhobe, the learned Counsel for the Respondent No.3.

2. Rule, made returnable forthwith by consent of the parties.

The Petitioner has moved this Court seeking the quashing of the Order dated 25-9-2001 passed by the Additional Civil Judge, Senior Division, Mapusa in Special Civil Suit No.106/99/SR/I, challenging the Order to the effect that the matter be posted for inquiry - if need be oral inquiry to ascertain whether the suit was compromised on 11-12-2000.

3. It appears from the record that the Applications Exhibit 57 to Exhibit 71 were filed

and on 8-12-2000 the Plaintiff with the Advocate appeared in the matter for the Plaintiff and both the sides Advocates sought adjournment to see whether settlement was possible. Subsequently, an Application came to be filed (Exhibit 57) on behalf of the Plaintiff and Advocates for Defendants No.1, 2, 3 and 5, submitting that the parties had arrived at a settlement at Bangalore for a meeting held on 11-12-2000. The terms agreed upon were annexed thereto and as per the said terms the suit was required to be disposed of. There was a prayer that matter be fixed on 24-1-2001 and on that day the Plaintiff's Advocate retired from the suit. Thereafter, certain other Application was filed on behalf of Defendants No.1 to 4 insisting that a decree be drawn in terms of the consent terms. In short, the issue involved before the learned trial Judge was whether there was a valid and legal compromise as contemplated by the provisions of Order XXIII, Rule 3 of the Civil Procedure Code or not, for which purpose the learned trial Judge issued the impugned Order to hold an inquiry - if need be oral inquiry to ascertain whether the suit was compromised as alleged.

4. The learned Counsel for the Petitioner submitted that there could not be an

independent inquiry and such direction to hold independent inquiry, apart from the adjudication of the suit, is illegal in law.

After hearing the learned Counsel for the parties and having reference to the proviso to Rule 3 of Order XXIII of the Civil Procedure Code, there is no doubt whatsoever that the question and issue regarding existence of valid and legal compromise amongst the parties would be required to be adjudicated as part and parcel of the suit and not by independent inquiry.

Smt. Agni, the learned Counsel for the Petitioner, also submitted that such issue which would be raised by the trial Court under direction of this Court, would essentially be part and parcel of other issues involved and should be adjudicated along with other issues and not as preliminary issue to be adjudicated in advance. In support of her submission, she sought to put reliance on the Apex Court ruling in the case of **Star Construction and Transport Co. and others v. The India Cements Ltd. (2001 AIR SCW 742).** I have critically perused the ratio of that judgment. However, in my considered view, the ratio thereof would not be applicable to the present case, especially when it

states that the objections regarding compromise under Order XXIII C.P.C. will have to be dealt with appropriately on full trial. The term 'full trial' does not contemplate adjudication along with other issues but full adjudication on that particular issue which would be raised as a preliminary issue.

5. Therefore, having considered all facts and circumstances involved in the case, it is hereby directed that the learned trial Judge shall frame preliminary issue in the course of the suit regarding the question of legality, validity and existence of the compromise alleged amongst the parties as contemplated by provisions of Order XXIII, Rule 3 of Civil Procedure Code and the said preliminary issue shall be adjudicated initially before other issues involved in the suit. The parties are at liberty to amend their pleadings, if required, in the course of the adjudication of the suit.

6. Hence the Order dated 25th September, 2001 passed by the Additional Civil Judge, Senior Division, Mapusa in Special Civil Suit No.106/99/SR/I is hereby set aside with directions that the preliminary issue regarding the

impugned question shall be raised and adjudicated initially before adjudication of other issues involved.

6. With these directions, the Petition stands disposed of with no order as to costs.

P.V. KAKADE,J.

ac.